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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ELECTRIC SOLIDUS, INC. d/b/a
SWAN BITCOIN, a Delaware
corporation,

Plaintiff,

v.

PROTON MANAGEMENT LTD., a
British Virgin Islands corporation;
THOMAS PATRICK FURLONG;
ILIOS CORP., a California corporation;
MICHAEL ALEXANDER HOLMES;
RAFAEL DIAS MONTELEONE;
SANTHIRAN NAIDOO; ENRIQUE
ROMUALDEZ; and LUCAS
VASONCELOS,

Defendants.

Case No. 2:24-cv-08280-MWC-E

**DEFENDANT PROTON'S
FURTHER SUPPLEMENTAL
MEMORANDUM REGARDING
PLAINTIFF'S MOTION TO
COMPEL**

DISCOVERY MATTER

Date: May 16, 2025
Time: 9:30 a.m.
Judge: Hon. Charles F. Eick
Crtrm.: 750, 7th Fl.

Discovery Cutoff: November 7, 2025
Pre-Trial Conf. Date: April 26, 2026
Trial Date: May 4, 2026

1 Defendant Proton Management Ltd. (“Proton”) respectfully requests leave to
2 submit this further supplemental brief regarding Plaintiff Electric Solidus, Inc. d/b/a
3 Swan Bitcoin’s (“Plaintiff” or “Swan”) Motion to Compel Responses to Targeted
4 Discovery Requests (ECF 177) and in response to Swan’s additional supplemental
5 statement (ECF 201). Proton submits this further supplemental memorandum to
6 provide an update on the Parties meet and confer on the discovery requests that are
7 the subject of the Motion, which Swan filed prematurely while the parties continued
8 to meet and confer on the requests. Those requests appear to have led to a *new*
9 impasse, which Swan improperly asks the Court to decide on the instant motion,
10 without properly engaging in the required process under Local Rule 37.

11 Since the parties’ preparation of their Joint Rule 26(f) Report in early
12 February 2025 (ECF 114-1), Proton has informed Swan that if the Court determined
13 that it has personal jurisdiction over Proton, Proton intended to file a motion to
14 compel arbitration under the equitable estoppel doctrine. Less than a week after the
15 Court ruled that it has personal jurisdiction over Proton, Proton requested that Swan
16 submit its claims against Proton to arbitration. ECF 194-5. The parties met and
17 conferred on April 18, 2025, and Swan stated that it would not agree to arbitration.
18 ECF 194-1, ¶ 6. Proton filed its motion on May 2, 2025 (“Arbitration Motion”).
19 ECF 194. During the required meet and confer process before filing the Arbitration
20 Motion, Swan argued that Proton has waived its right to compel arbitration because
21 Proton filed a motion to dismiss for lack of personal jurisdiction or, in the
22 alternative, failure to state a claim and because Proton is “engaging in discovery”
23 (Ex. 1), even though Swan has repeatedly complained to this Court regarding
24 Proton’s lack of participation in discovery and even though Proton has limited its
25 discovery activity to good faith responses to Swan’s discovery, meeting and
26 conferring on those responses, participating in drafting joint stipulations and
27 supplemental briefing on Swan’s discovery motions, including the instant motion,
28 and serving targeted discovery requests limited to defending itself against Swan’s

1 intended motion for preliminary injunction.

2 While Swan's assertion that Proton waived its right to move to compel
3 arbitration by filing a motion to dismiss for lack of personal jurisdiction is
4 incorrect¹, in response Proton has attempted to continue its engagement in the
5 discovery process with the understanding that Swan will not use this activity to
6 support its waiver argument. Swan did not agree. ECF 197-2. Therefore, on May
7 5, 2025, Proton again informed Swan that Proton desires to continue to engage on
8 discovery matters, including supplementing responses, producing documents, and
9 meeting and conferring on any disagreements, in good faith and so as to not delay
10 the resolution of those issues, however, Proton could only do so if Swan confirmed
11 that it would not use Proton's continued good faith engaging in discovery matters as
12 a basis to argue that Proton has waived its right to compel arbitration. Rather than
13 responding to Proton's request directly, Swan responded by stating that Proton had
14 incorrectly told the Court that it would produce documents and asserting that Proton
15 should "correct" the statements. ECF 201-1.

16 Proton stated in the Joint Stipulation and the supplemental memo regarding
17 the instant motion that it supplemented the discovery responses at issue and agreed
18 to produce documents, which is entirely correct. Indeed, it is still correct—Proton
19 agrees to continue engaging in discovery in due course, including producing
20 documents. It simply seeks assurances from Swan that doing so will not prejudice
21 its rights under the law to compel arbitration. Swan's position that Proton's
22

23 ¹ See *Ghazizadeh v. Coursera, Inc.*, 737 F. Supp. 3d 911, 920-921 (N.D. Cal. 2024)
24 (no waiver where party files motion to dismiss under FRCP 12(b2) and 12(b)(6);
25 *Galaxia Elecs. Co. v. Luxmax, U.S.A.*, No. LA CV16-05144 JAK (GJSx), 2018 U.S.
26 Dist. LEXIS 246119, at *32 (C.D. Cal. June 6, 2018) (same); *Armstrong v. Michaels*
27 *Stores, Inc.*, 59 F.4th 1011, 1015-1016 (9th Cir. 2023) (finding no waiver where
28 defendant engaged in discovery but pleaded arbitration as an affirmative defense
"and explicitly and repeatedly stated its intent to move to compel arbitration").

1 production of documents and engaging in meet and confer constitutes a substantive
2 waiver of Proton's right to compel arbitration has created a new impasse that further
3 demonstrates that Swan's instant motion to compel is not properly before the Court
4 and that Swan has not abided by Local Rule 37 regarding this dispute.

5
6 Dated: May 5, 2025

BERGESON, LLP

By: /s/ Adam C. Trigg

Adam C. Trigg

Attorneys for Defendant

PROTON MANAGEMENT LTD.